

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

HONORABLE GEORGE C. PAINE, II
HONORABLE KEITH M. LUNDIN
HONORABLE MARIAN F. HARRISON

IN RE

PACER FEE EXEMPTION REQUEST

Debtor(s)

NOTICE OF ENTRY OF ORDER

Notice is hereby given that an order was entered on April 11, 2005

The order is available at the courts' website, <http://www.tnmb.uscourts.gov>

Dated: April 11, 2005

LLOYD C. RAY, JR., CLERK

By: T. JAMES
Deputy Clerk



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

RECEIVED

APR 11 2005

In Re:

PACER FEE EXEMPTION REQUESTS

Honorable George C. Paine, II
Honorable Keith M. Lundin
Honorable Marian F. Harrison

ORDER

This matter is before the court on the motions of David F. Cannon, John H. Lowe, J. Kendall, O.B. Hoffstetter III, Scott D. Wilson, Richard R. Rooker, Circuit Court Clerk for Davidson County, Tennessee, Thomas J. Drake Jr., and Advind Parbhu requesting exemptions from charges for access to public information via the judiciary internet sites more commonly known as PACER (acronym for "Public Access to Court Electronic Records").¹ A hearing was held on Tuesday, February 8, 2005, but only John H. Lowe and David F. Cannon appeared. For the reasons more particularly described herein, the court DENIES the request for exemptions of David F. Cannon, John H. Lowe, J. Kendall, O.B. Hoffstetter III, Scott D. Wilson, Thomas J. Drake Jr., and Advind Parbhu, but GRANTS the exemption of Richard R. Rooker, Circuit Court Clerk for Davidson County, Tennessee.

On May 23, 2001, this court issued a Memorandum Opinion granting exemptions

¹PACER "is an electronic public access service that allows users to obtain case and docket information from the Federal Appellate, District and Bankruptcy courts, . . . PACER is a service of the United States Judiciary." The PACER Service Center is run by the Administrative Office of the United States Court. **See Administrative Office of U.S. Courts Pacer Service Center, Public Access to Court Electronic Records: Frequently Asked Questions: What is PACER and who runs it? at <http://pacer.psc.uscourts.gov/faq.html> (April 30, 2001).**

for parties that requested such based upon the "cause" shown at the time. The Memorandum provided in relevant part that:

According to the website maintained by the Administrative Office to assist in the setup and use of PACER, the fees for PACER are necessary based on the following:

In 1988, the Judiciary sought funding through the appropriation process to establish capability to provide electronic access services. Rather than appropriating additional funds for this purpose, Congress specifically directed the Judiciary to fund the initiative through collection of user fees. As a result, the program relies exclusively upon fee revenue.

See Administrative Office of U.S. Courts Pacer Service Center, Public Access to Court Electronic Records: Frequently Asked Questions: Why are there user fees for PACER? at <http://pacer.psc.uscourts.gov/faq.html> (April 30, 2001). The money generated from the PACER user fees is to be deposited as offsetting collections to the Judiciary Information Technology Fund ("JITF") as reimbursement for expenses incurred in providing these services. Revenue deposited into the JITF may be used for "the expenses, including personal services and other costs, for the effective management, coordination, operation, and use of automated data processing equipment in the judicial branch." **28 U.S.C. § 612(a); see also, Administrative Office of the United States Courts, December 29, 1998 Memorandum; (signed by Leonidas Ralph Mecham, Director).** Billing for the Internet PACER is administered by the PACER Service Center, which is located in San Antonio, Texas.

In accordance with Public Law 101-515, an exemption is to be allowed from PACER fees for: persons or classes of persons . . . in order to avoid unreasonable burdens and to promote public access to such information. **Judicial Appropriations Act, 1991, Pub. L. No. 101-515, 104 Stat. 2101 (signed Nov. 5, 1990).** To further elaborate on the process of allowing exemptions, the Administrative Office distributed the following guidelines as adopted by the Judicial Conference, (termed "Judicial Conference Advisory Notes"):

Exemptions should be granted as the exception, not the rule. The exemption language is intended to accommodate those users who might not otherwise have access to the information in this electronic form. It is not intended to provide a means by which a court would exempt all users. Examples of persons and classes of person who may be exempted from electronic public access fees include, but are not limited to: indigents; bankruptcy case trustees; not-for-profit organizations; and voluntary ADR neutrals.

Administrative Office of the United States Courts, April 30, 2001 Memorandum; (signed by Leonidas Ralph Mecham, Director).

Also by way of explanation, the PACER website clarifies when the fees should be waived by the court in its "Frequently Asked Questions" page:

A court may, for good cause shown, exempt persons or classes of person from the electronic public access fees, in order to avoid unreasonable burdens and to promote public access to such information. This language is intended to provide a mechanism by which a court may, upon appropriate demonstration of need, grant an exemption from the fees for use of the electronic access to court data.

The appropriate procedure by which a court may consider the grant of an exemption from the fee is upon motion by the party seeking exemption from the fee. The motion should demonstrate the basis upon which the party claims such exemption. The standards established by Congress are: to avoid unreasonable burdens and to promote public access to such information. A party must demonstrate that both standards have been met in order for a court to grant an exemption from payment of this fee. Procedurally, upon granting a motion for exemption from fees a copy of such order should be provided to the PACER Service Center in San Antonio so that the party will not be billed for use of the electronic access service.

See Administrative Office of U.S. Courts Pacer Service Center, Public Access to Court Electronic Records: Frequently Asked Questions: Can the user fee be waived? at <http://pacer.psc.uscourts.gov/faq.html> (April 30, 2001).

Congress, the Administrative Office of the United States Court, and the Judicial Conference have set forth that exemptions can only be granted for "cause." "Cause" is "to avoid unreasonable burdens and to promote public access to such information," but otherwise "cause" is undefined by Congress, the Administrative Office or the Judicial Conference. Under a preponderance of the evidence, if the petitioner can show more likely than not that the petitioner will be unreasonably burdened and that an exemption will promote public access to such information, then the court may grant the exemption.

Based on this standard, the testimony of Lloyd C. Ray, Clerk of Court for the Bankruptcy Court for the Middle District of Tennessee, the testimony of local attorney

David Mangum, and the testimony of the standing chapter 13 trustee, Henry Hildebrand, the court granted exemptions to the following:

1. Christine Zellar Church, Legal Aid Society of Middle Tennessee;
2. Gary D. Wood, Attorney for MDHA;
3. Rhonda Freels, Tennessee Department of Human Services,
4. Dr. Phyllis Flott, Tennessee State University College of Business (researcher);
5. Henry E. Hildebrand, Standing Chapter 13 Trustee,
6. Ellen B. Vergos, United States Trustee's Office;
7. J. Michael Combs, Attorney;
8. T. Larry Edmonson, Attorney (Chapter 7 Panel Trustee);
9. Michael Gigandet, Attorney (Chapter 7 Panel Trustee);
10. Robert C. Goodrich, Attorney (Chapter 7 Panel Trustee);
11. Jeanne Burton Gregory, Attorney (Chapter 7 Panel Trustee);
12. Eva M. Lemeh, Attorney (Chapter 7 Panel Trustee);
13. Susan R. Limor, Attorney (Chapter 7 Panel Trustee);
14. John C. McLemore, Attorney (Chapter 7 Trustee);
15. David G. Rogers, Attorney (Chapter 7, Trustee);
16. Robert H. Waldschmidt, Attorney (Chapter 7 Panel Trustee);
17. Cynthia Asbury, Attorney;
18. James A. Flexer, Attorney;
19. Christopher R. Fox, Attorney;
20. Perry R. Happell, Attorney;
21. Kevin J. Jones, Attorney;
22. David Mangum, Attorney;
23. Thomas Nance, Attorney;
24. Elizabeth Parrott, Attorney;
25. James Roberts, Jr., Attorney;
26. Rothschild & Associates (Maria Salas and Edgar Rothschild, Attorneys).

The Bankruptcy Court for the Middle District of Tennessee received additional exemption petitions following the May 21, 2001 Memorandum, and Judge Lundin and Judge Paine also granted exemptions to:

27. Karl F. Dean, The Department of Law, Metropolitan Government of Nashville and Davidson County
28. Eugene Ward, Nashville Electric Service
29. Laura Israel Smith, Nashville Electric Service
30. Robert C. Goodrich, Jr., Attorney
31. Ronald G. Steen, Jr., Attorney
32. Melissa Kurtz Blackburn
33. Samuel K. Crocker, Attorney, Chapter 7 Panel Trustee
34. Martha Cone Beck, Attorney
35. Keith A. Turner, Attorney
36. Dale Bohannon, Attorney
37. Roy DeSha, Jr., Attorney

38. Timothy G. Nirahos, Attorney
39. Duane W. DeVault, Attorney
40. J.M. (Mickey) George, Attorney
41. Lynda F. Jones, Attorney
42. Steven L. Lefkovitz, Attorney
43. Jessica M. Mullen, Attorney
44. Margie Rigsby, Attorney
45. David E. Phillips, Attorney
46. William Bryan Roehrig, Attorney
47. Arnold E. Lefkovitz, Attorney
48. Tisha L. Morris, Attorney
49. Tennessee Department of Human Services Investigative Section
50. Roy Wilson, Attorney
51. Robert J. Harlan, Attorney
52. Christopher Lee Dunn, Attorney
53. Mark Podis & Associates
54. Howard G. Pick, Attorney
55. Rabin P. Nimmo, Attorney
56. Scott F. Norberg, Attorney (Florida International University)
57. Harry G. Lasser, Attorney
58. David Holmes, Attorney
59. Renard A. Hirsch, Attorney
60. Carolyn F. Piphus, Attorney
61. Jeffrey M. Grissim, Attorney
62. Teri H. Gordon, Attorney
63. Glenn Cox, Attorney
64. Terry R. Clayton, Attorney
65. Cheryl Church, Maury County Clerk and Master
66. William H. Dale, Jr., Delinquent Tax Attorney, Maury County
67. William T. Cheek, III, Attorney
68. Margaret L. Behm, Attorney
69. Baker Donelson Bearman & Caldwell (now Baker Donelson Bearman
Caldwell & Berkowitz)
70. Bass Berry & Sims
71. Gullett Sandford Robinson & Martin
72. Harwell Howard Hyne Gabbert & Manner
73. Smith & Puryear
74. Harvill & Lovelace
75. John R. Cheadle and Evalina C. Cheadle, Attorneys
76. Floyd N. Price, Attorney

In accordance with Public Law 101-515, an exemption may be allowed to a person or class of persons in order to avoid unreasonable burdens and to promote public access to information. On October 4, 2004, the bankruptcy court imposed restrictions on information, access, and filing of all bankruptcy cases and adversary proceedings with the implementation of "CM/ECF" (Case Management/Electronic Case Filing). Effective on that date, all pending and future cases are required to be filed in

compliance with the Administrative Procedures for Electronic Case Filing ("APECF"). In order to file electronically, training and registration requirements must be met under the APECF. PACER is still the application which allows attorneys and the public to access the court's electronic docket and electronic claims register from a personal computer via the internet. It has not yet been shown to the court that CM/ECF has in any way enhanced the goal of "promoting public access to information" and it has not yet been shown that the implementation of CM/ECF alleviated the unreasonable burdens as enumerated in the court's May 23, 2001 Memorandum.

However, based upon the proof presented at the hearing by Mr. Cannon and Mr. Lowe, the court cannot grant their exemptions. The court instructed counsel to address their applications in light of the implementation of CM/ECF. Mr. Cannon and Mr. Lowe conceded that they assumed CM/ECF pre-empted their exemption applications, and they presented no evidence demonstrating "cause." The court finds therefore, that the applicants failed to demonstrate "cause" at this time, and the court must DENY the exemption requests of David F. Cannon, John H. Lowe, J. Kendall, O.B. Hoffstetter III, Scott D. Wilson, Thomas J. Drake Jr., and Adrvind Parbhu.

Although Richard R. Rooker, Circuit Court Clerk for Davidson County Tennessee, did not appear at the hearing, the court finds his application alone provided sufficient "cause" for the grant of an exemption. In accordance with Public Law 101-515, an exemption may be allowed to a person **or class of persons** in order to avoid unreasonable burdens and to promote public access to information. The court finds that "cause" exists to grant an exemption to this public entity, as a class of persons loosely characterized as public entities.

No motion or other pleading is before the court for consideration of new

exemptions or reconsideration of exemptions previously granted. If any party feels the exemptions now standing are inappropriate or that "cause" can be shown for issuance of a new exemption, that party may bring such matters before the court for consideration.

It is, THEREFORE, so ordered.
This ____ day of April, 2005.

/s/George C. Paine, II

George C. Paine, II
Chief Judge
United States Bankruptcy Court

4/8/05